

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0551
SALES AND USE TAX
FOR TAX PERIODS: 1996-1997

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Issue

1. **Sales and Use Tax**- Shop Supplies

Authority: IC 6-2.5-3-2, IC 6-2.5-2-1, Information Bulletin #28.

Taxpayer protests the assessment of use tax on shop supplies.

Statement of Facts

Taxpayer is an automotive body shop. After a routine audit, Taxpayer was assessed additional sales and use tax, interest and penalties. Taxpayer protested the assessment of additional use tax on shop supplies and a hearing was held. More facts will be provided as necessary.

1. **Sales and Use Tax**- Shop Supplies

Discussion

Taxpayer's business is the repair of glass and body damage on vehicles. In performing these repairs, Taxpayer uses many consumable items such as masking tape, plastic, paint guards, sand paper and rags. Taxpayer protests the assessment of use tax on these consumable shop supplies. Taxpayer contends that they work with third party insurance companies which remit payment for insured customers.

According to Taxpayer, the industry practice is to pay a fixed dollar amount per repair hour for all materials used. Taxpayer lists "paint materials" on its estimates and invoices as allegedly required by the third party insurers. Taxpayer contends that the term "paint materials" includes the paint and the consumable shop supplies. Taxpayer charges sales tax on the amount of the "paint materials." Taxpayer contends that it should not have to pay use tax on the consumable shop supplies since sales tax was collected and remitted on the "paint materials."

Indiana imposes a use tax "on the storage, use, or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction." This tax is paid by the user or consumer of the tangible personal property. IC 6-2.5-3-2. Indiana also imposes a sales tax "on retail transaction made in Indiana" The purchaser of the tangible personal property is liable for payment of the sales tax. Merchants collect the sales tax as agents of the state and remit the tax to the Indiana Department of Revenue. IC 6-2.5-2-1.

Information Bulletin #28 for Sales and Use Tax which was issued in June, 1992 clarifies the sales and use tax laws for motor vehicle sales and repairs. The clarification of the taxability of shop supplies is as follows:

Consumable supplies, such as masking paper and tape, oil dri, sandpaper, buffing pads, rags and cleaning supplies, used to repair and service motor vehicles are subject to use tax if purchased exempt from sales tax. The purchaser becomes the final user of such items because its customer does not become the owner of such consumable supplies. Although the dealer may charge the customer for such items, the items are not being sold to the customer in a retail transaction. Use tax should be self assessed and remitted by the purchaser directly to the Department if such consumable supplies were purchased exempt from sales tax.

In Taxpayer's situation, it is the final user of supplies such as those described in the Information Bulletin concerning the repair of the automotive vehicles. Taxpayer does not pay sales tax when it purchases the shop supplies. The shop supplies are not sold to the customer in a retail transaction. Therefore Taxpayer owes use tax on the consumable shop supplies.

Taxpayer's contention that sales taxes were incorrectly collected and remitted to Indiana on those shop supplies does not change Taxpayer's use tax liability.

Finding

Taxpayer's protest is denied.